

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD

Dated the 18th May, 1987.

No. 519-21/LD/Leg(A)87. The following Act of the Assembly received assent of the President on 9th day of May, 1987, is hereby published for general information:-

(ACT IX OF 1987)

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ACT

to provide for the law relating to the repayment and recovery of loans advances by the Co-operative Banks.

WHEREAS on account of promulgation of Establishment of the Federal Bank for Cooperative and Regulation of Cooperative Banking (Adaptation) Ordinance, 1977 all the Cooperative Banks except the Azad Kashmir Government Cooperative Bank, in Azad Jammu and Kashmir territory, functioning on or before the 7th January, 1977, have ceased functioning as such banks and heavy loans advanced by these banks are outstanding;

AND WHEREAS it is expedient to provide for the repayment and recovery of these loans in order to facilitate the payment to the depositors and creditors of these banks;

It is hereby enacted as follows:-

1. Short title and Commencement, - (1) This Act may be called the Cooperative Banks (Repayment and Recovery of Loans) Act, 1987.

(2) It extends to the whole of the Azad Jammu and Kashmir territory and shall apply to the debtors and borrowers of the Cooperative Banks wherever they may be.

(3) It shall come into force and shall be deemed to have taken effect as and from the 25th day of December, 1977 and shall override all other laws.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

“(a) ‘borrower’ means a person who has obtained a loan from a Cooperative Bank or a Cooperative Society or his surety, or, in case of beneami loans a person who is the real beneficiary or recipient of the loan, and includes legal heirs and the successor-in-interest of any such person or surety is also includes those persons and

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Cooperative Societies who obtained loan from Azad Kashmir Government Cooperative Bank Ltd. Muzaffarabad or Central Co-operative Bank Ltd. Muzaffarabad prior to its merger into the Azad Kashmir Government Co-operative Bank."

"Cooperative Bank' means a Cooperative Society carrying on bank business immediately before coming into force of the Establishment of Federal Bank for Cooperative and Regulation of Cooperative Banking (Addiction) Ordinance, 1977;

'Cooperative society' means any society established and registered under the provisions of the Cooperative Societies Act, 1925 or under any other law for the time being in force relating to the registration of Cooperative Societies;

'Government' means the Azad Government of the State of Jammu and Kashmir;

"Loan" included a benami loan, an advance, a cash credit, an overdraft, a packing credit, a bill discounted and purchased, letter of credit, any other financial accommodation or engagement provided by a Cooperative Bank to a borrower or any transaction which in the opinion of the Registrar in substance a loan whether based on a valid instrument or not.

Explanation.- 'Benami loan' means a loan the real beneficiary or receipt 'whereof is a person other than the person in whose the loan is advanced or granted '];

"Special Tribunal": means a Special Tribunal established under this Act.]

'Registrar' means the Registrar Cooperative Societies, Azad Government of the State Jammu and Kashmir or any other officer specially appointed or empowered as such by the Government;

'Provincial Cooperative Bank' means Azad Kashmir Government Cooperative Bank Ltd. or any Cooperative Society as defined and notified under clause (p) of Section 2 of the 'Establishment of Federal Bank' for Cooperative Regulation of Cooperative Banking Ordinance, 1976, as adapted in Azad Jammu and Kashmir;

Semi-colon subs. for full-stop and new clause (ee) added by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992.

(h) "Unsecured or insufficient secured loan" means a loan which is not secure by mortgage, pledge, hypothecation, assignment of such property of the borrower or of his surety of both as the Registrar may think adequate.

Payment_and_ securing of loans.- Notwithstanding anything contained in any other law for the time being in force or in any agreement or other instrument award or decree of any court, every loan payable to a cooperative bank shall, unless repaid earlier, be repaid to the Provincial Cooperative Bank in case of Cooperative Banks which stand dissolved under Section 42, sub-section (4) of the Establishment of the Federal Bank for Cooperative and Regulation of Cooperative Banking Ordinance, 1976, as adapted in Azad Jammu and Kashmir, and to the successor Cooperative Society in case of Cooperative Banks which has been converted into non-banking societies under sub-section (5) of the said section, in the following manner, that is to say;-

(a) not less than twenty percent of the loan shall be paid within sixty days from the commencement of the Act No. XXXIV of 1977 or in such extend period not exceeding thirty days as the Registrar may fix;

(b) the balance of the loan after payment as aforesaid shall, within one month from the expiry of the period mentioned in clause (a), be secured by mortgage, pledge, hypothecation or assignment of such property of the borrower or his surety or of both as the Registrar may think adequate and shall be repaid in such installments within a period not exceeding one year from the commencement of the Ordinance XXXIV of 1977 as the Registrar directs;

Provided that the Registrar may, if he considers necessary in case in which not less than fifty percent of the loan has been repaid within the aforesaid period of one year, extend the period by a further period and such further period shall not exceed nine months.

Recovery of loans.-(1) If the amount of any loan or any part thereof to be repaid in accordance with the provisions of section 3, is not paid within period or periods specified in the said section, the same may be recovered by the Registrar according to the law and under the rules for the time being in force for the recovery of arrears of land revenue and while doing so he may exercise all or any of the powers of Collector under the Land

Revenue Act and the rule made thereunder.

(2) Where.--

(a) the borrower is a company, partnership or association of persons and the assets of such company, partnership or association are not sufficient to meet the total liability, including the loans payable under this Act of such company, partnership or association;

(b) the borrower is an individual person and his assets are not sufficient to meet his total liability; and the Registrar is of the opinion, after such enquiry as he may deem fit, to hold in the matter, that the loan has been appropriated by any director, starched holder, partner or members, as the case may, of such company, partnership or association or any other person and, in case of an individual borrower by any other person and of an individual borrower by any other person and of an individual borrower by any other person than the borrower himself, the loan shall be recovered from the person who has appropriated the loan as aforesaid and his assets as if the loan had been taken by him;

(3) The recovery under this Section shall not save a borrower from any other means of recovery of punishment provided in this Act or rules made thereunder or under any other law for the time being in force.

(1) In respect of Cooperative Banks which stand dissolved by the operation of Section 42, sub-section (4) of the Establishment of Federal Bank for Cooperatives and Regulations of Cooperative Banking Ordinance, 1976, as adapted in Azad Jammu and Kashmir, the Provincial Cooperative Bank and in respect of the Cooperative Banks which have been converted into non-banking societies under sub-section (5) of Section 42 of the said Ordinance XXXIV of 1977, or within such extended period as the Registrar may allow, furnish to the Registrar full particulars in respect of all cases of loans required to be repaid under Section 3;

'((2) on receipt of information under sub-section (1) in respect of any loan or where such information has not been furnished for any reason and the Registrar gets information from any other source about any unpaid loan borrowed, the Registrar may cause

Substituted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Original is reproduced as under:

“(2) On receipt of information under sub-section (1) in respect of any loan the Registrar may cause notice to be issued to borrower requiring him to repay and secure the loan.”

notice to be issued to borrower requiring him to repay and secure, the loan alongwith interest stipulated by the lending bank upto the date of recovery.]

(3) Where any borrower to whom notice under sub-section (2) is issued does not admit the loaned or any liability arising therefrom, he shall within thirty days of the receipt of notice, or within such further period as the Registrar may, in special circumstances allow, submit either personally or by registered post (acknowledgement due), a written statement to that effect to the Registrar, who thereupon shall cause notice to be issued to the Bank or society concerned, and shall, after making such inquiry as he considers necessary, and giving the parties reasonable opportunity of being heard, decide about the liability'

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*[5-A. Special Tribunal.- (1) For the purposes of this Act, the

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Government may appoint as many Special Tribunals as may be necessary.

(2) A Special Tribunal shall consist of a person who,-

(a) is or has been a Judge of the High Court; or

(b) is qualified to be a Judge of the High Court; or

(c) is not below the rank of the Secretary to Government.

(3) any decision, declaration, order or notice of the Registrar under this Act, shall be appealable before the Special Tribunals, within thirty days of such decision, declaration, order, or notice.

Power of Tribunals.- (1) The Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against.

(2) The Tribunal shall for the purposes of deciding any appeal be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil

Subsection (4), (5) and (6) omitted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Original subsections are reproduced as under:

"(4) For the purposes of this Act the Government may appoint as many Special Tribunals as may be necessary.

(5) A special Tribunal shall consist of a person who—

(a) is or has been a Judge of the High Court, or

(b) is qualified to be a Judge of the High Court; or

(c) is not below the status of the Secretary to Government, appointed by the Government.

(6) Decision of the Registrar under sub-section (3) shall be appealable in the Special Tribunal with in thirty days from the date of appointment or such Special Tribunal.

Sections 5-A to 5-D added by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992.

5-C.

5-D.

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Procedure 1908 (Act V of 1908) including powers of,-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) issuing commission for the examination of witnesses and documents.

Appeals.- Any party aggrieved by a final order passed by the Special Tribunal, may prefer an appeal to the Special Tribunal, may prefer an appeal to the Supreme Court within thirty days of such order.

Application of Limitation Act, 1908.- Sections 5 to 12 of the Limitation Act, 1908, as adapted in Azad Jammu and Kashmir,

shall apply mutatis mutandis, in respect of cases under this Act.]

Power of Registrar when making inquiry.- The Registrar shall, for the purpose of making any inquiry under this Act, have

the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery or production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commission for the examination of witness;
- (e) appointing guardians or next friends of persons who are minors or of no sound mind;
- (f) adding legal representatives of deceased borrowers or sureties;
- (g) substituting the names of rightful parties;
- (h) consolidation of cases; and
- (i) any other matter which may be prescribed by rules, made under Section 3.

Delegation of powers.- The Registrar, may, by notification in

the Official Gazette delegate any of the powers under the provisions of this Act, to any person sub-ordinate to him.
Rules.-The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

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Detention in civil prison.- '[Notwithstanding anything contained in any other law for the time being in force, the Registrar] may send a borrower or debtor or the surety to Civil Person if any one of them is not ready or has failed to further security to the satisfaction of the Registrar as required under section 3 and may keep them or anyone of them in the prison till such security is furnished or the outstanding loan is repaid by them or nay one of them.

Restriction on Alienation.- 7[(1) Where any borrower has on or after the 7" day of January, 1977 allocated any property by sales exchange, gift, mortgage or will, otherwise than by or under an order or decree of a Court not being a decree or order which in the opinion of Special Tribunal is collusive or fraudulent, or with the Special permission of the Government, granted by any order in writing, subject to such conditions as may be specified therein, such alienation shall not operate to transfer any right, title or interest in the property of the borrower unless the loan due from the borrower has been repaired.]

(2) Any alienation as aforesaid shall become void upon a declaration to be effect made by the Registrar and published in the Official Gazette and this declaration shall have effect of and be acted upon as a decree of a Civil Court.

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Punishment.- (1) Whoever contravenes any of the provisions of this Act or the rules made thereunder shall be punishable with imprisonment for a term which may extend to seven year, or with fine or with both;

Provided that the proceedings under this sub-section or any result there of shall not save a borrower from any other means of recovery or punishment provided in this Act or rules made there under or under any other law for the time being in force.

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For the words "The Registrar" in the first line the words "notwithstanding anything contained in any other law for the time being in force, the Registrar" Substituted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Substituted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Original is reproduced as under:

"(1) Where any borrower has, on or after the 7th day of January, 1977 alienated any property by sale, exchange, gift, mortgage or will, otherwise than by or under an order or decree of a Court or with the especial permission of the Government, granted by an order in writing, subject to such constitutions as may be specified therein, such alienation shall

not operate to transfer right, title or interest in the property of the borrower unless the loan due free the borrower has been repaid”

Omitted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Original is reproduced as under:

“(3) Any party aggrieved by a declaration made by the Registrar under sub-section (2) may prefer an appeal to Government against such declaration and the order made by Government on such appeal shall be final and shall not be opened to question in any Court.”

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(2) Any person who obstructs or resists the enforcement of any order made under this Act shall be punished with rigorous imprisonment which may extend to seven years, or with fine, or with both.

Cognizance of Offence.- (1) Offences under this Act shall be cognizable and non-billable.

(2) Notwithstanding anything contained in any other law for the time being in force offences under this Act shall be triable by a Magistrate of the First Class.

Assistance _to Registrar.- All Officers and servants of the Government shall assist the Registrar in the performance of his functions.

Bar of jurisdiction.- (1) Notwithstanding anything contained in any other law for the time being in force and subject to '[sub-section (3) of the Section 5-A], no Court shall have jurisdiction:-

(a) to certain or adjudicate upon any matter which the Government, or the Registrar is empowered by or under this Act or the rules framed thereunder to dispose of or determine; or

(b) to question the legality or validity of anything done under this Act or the rules framed thereunder by the Government or the Registrar.

(2) No Court or other authority shall be competent to grant an injunction or other order in relation to any proceeding before the Government, the Registrar or anything done or to be done by or at the instance of the Government by the Registrar, under this Act or the rules framed thereunder:

Provided that in case an application is made to the special tribunal of grant of an injunction, the tribunal shall not grant such injunction unless the Advocate General has been given notice of the application and the Advocate General or any officer authorized by him in this behalf has been given an opportunity of being heard.

713) | Any proceedings pending before any Court, in absence of remedy under Section 5-A, in respect of any matter to which

For the words and figures "sub-section (6) of Section 5" the words and figures "sub-section (3) of Section 5-A" substituted by the Cooperative Banks (Repayment and Recovery of

Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992.

Substituted by the Cooperative Banks (Repayment and Recovery of Loans) (Amendment) Act, 1992 (XXI of 1992) dt. 15-07-1992. Original is reproduced as under:

“(3)Any proceeding pending before any Civil Court, including the High Court, and the Supreme Court, in respect of any matter to which this Act relates, shall abate forthwith and no such proceeding shall henceforth be taken cognizance of by any such Court.”

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this Act relates, can be challenged before Special Tribunal within thirty days of the establishment of Tribunal.

Savings.-Notwithstanding any judgment, decree or order of any Court, including High Court, everything done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of the Cooperative Bank (Re-payment and Recovery of Loans) Ordinance, 1977 (Ordinance XXXIV of 1977), or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, take, issued, made, initiated or exercised under this Act.

Repeal.- The Cooperative Banks (Repayment and Recovery of Loans) Act, 1986 (Act XXIV of 1986) is hereby repealed.

Sd/-

(Syed Atta Mohy-ud-Din Qadri)
Deputy Secretary Law